

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION**

|   |   |                            |
|---|---|----------------------------|
| <b>ROCHELLE MALONE,</b>                   | ) |                            |
|   | ) |                            |
| <b>Plaintiff,</b>                         | ) |                            |
|   | ) |                            |
| <b>v.</b>                                 | ) | <b>No. 08-2723-STA-dkv</b> |
|   | ) |                            |
| <b>NEW GROWTH IN CHRIST CHRISTIAN</b>     | ) |                            |
| <b>CENTER d/b/a NEW GROWTH IN CHRIST,</b> | ) |                            |
| <b>et al.,</b>                            | ) |                            |
|   | ) |                            |
| <b>Defendants.</b>                        | ) |                            |

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**ORDER GRANTING VOLUNTARY DISMISSAL**

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Before the Court is Defendants' Motion to Dismiss for Lack of Subject Matter Jurisdiction (D.E. # 24) filed on November 7, 2008. Plaintiff has responded in opposition and in the alternative seeks voluntary dismissal of her Complaint pursuant to Rule 41(a)(1).

In this case, Plaintiff originally filed her case in the United States District Court for the Northern District Georgia. That Court granted Defendants' motion to transfer to this District on October 23, 2008 (D.E. # 19). Following transfer, Defendants filed their Motion to Dismiss arguing that all parties were in fact domiciled in Tennessee and that the Court lacked diversity jurisdiction. In response, Plaintiff argues that she had established domicile in Georgia at the time she filed her Complaint there, yet she has now returned to the state of Tennessee with the intention of re-establishing domicile here. Plaintiff seeks the alternative relief of being granted a voluntary dismissal in lieu of dismissal for lack of subject matter jurisdiction.

Fed. R. Civ. P. 41(a)(1)(A)(i) permits a plaintiff to simply file a "notice of dismissal

before the opposing party serves either an answer or a motion for summary judgment.”<sup>1</sup>

Defendants have not filed an answer or a motion for summary judgment. Thus, Rule 41(a)(1)(A)(i) would still be available to Plaintiff. Defendants to date have not sought leave to file a reply to Plaintiff’s response in which she proposed a voluntary dismissal or responded in anyway to oppose voluntary dismissal. Furthermore Rule 41(a)(1) does not set forth any requirements for the form of a notice of dismissal. Therefore, the Court will treat Plaintiff’s response as a notice of voluntary dismissal pursuant to Rule 41(a)(1). Plaintiff’s Complaint is dismissed, and Defendants’ Motion to Dismiss for Lack of Subject Matter is denied as moot.

**IT IS SO ORDERED.**

s/ **S. Thomas Anderson**  
S. THOMAS ANDERSON  
UNITED STATES DISTRICT JUDGE

Date: February 18<sup>th</sup>, 2009.

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<sup>1</sup> Fed. R. Civ. P. 41(a)(1).